

**Southwest Voter Registration Educ. Project v. Shelley, CV-03-5715-SVW,  
Appeal No. 03-56498**

*This summary has been prepared by court staff for the convenience of the reader and does not reflect the views of the court.*

**Nature of case:** The Southwest Voter Registration Education Project, the Southern Christian Leadership Conference of Greater Los Angeles, and the National Association for the Advancement of Colored People have filed a complaint against the California Secretary of State, alleging that the proposed use of punch-card balloting machines in some counties in the forthcoming California election, scheduled for October 7, 2003, will violate the Constitution and the Voting Rights Act. The plaintiffs allege that the “residual vote rate,” or error rate, of punch-card machines is twice that experienced by other voting technologies. They claim, therefore, that voters using punch-card machines will have a comparatively lesser chance of having their votes counted, in violation of the Equal Protection Clause. They also claim that the counties using punch-card systems have greater minority populations than counties using other voting systems, thereby disproportionately disenfranchising voters or diluting their votes on the basis of race, in violation of Section 2 of the Voting Rights Act.

**Relief requested:** The plaintiffs seek to delay the election until it can be conducted without use of pre-scored punch-card balloting machines.

**Ruling:** On August 20, 2003, Judge Wilson denied the plaintiffs’ application for a temporary restraining order and motion for preliminary injunction. He concluded that the plaintiffs would have difficulty overcoming the res judicata effect of the consent decree in *Common Cause v. Jones*, CV-01-3470-SVW, in which the California Secretary of State stipulated to decertify the punch-card machines, and Judge Wilson concluded that it was feasible for the counties to replace those machines before the March 2004 elections. In denying the preliminary injunction, Judge Wilson also concluded that the defense of laches posed a significant impediment to the prosecution of this suit. He further concluded that the plaintiffs were not likely to prevail on the merits of their claims under the Equal Protection Clause and the Voting Rights Act and that the balance of hardships weighed heavily in favor of allowing the October election to proceed.

**Appeal:** The plaintiffs have appealed the order denying the preliminary injunction. This court has granted their motion to expedite the hearing of the

appeal. The answering briefs are due on September 4, 2003, and any reply brief is due on September 8, 2003. Oral argument will be heard in Pasadena on September 11, 2003. The case continues to proceed in the district court.